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APPLICATION NO. 057465,462	FILING DATE 12/17/99	FIRST NAMED INVENTOR PUNAKALA	ATTORNEY DOCKET NO. S 2047.114
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EXAMINER WONG, L	
ART UNIT 1761	PAPER NUMBER 5

DATE MAILED: 03/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/465,402

Applicant(s)
Ponakala et al.

Examiner
Leslie Wong

Group Art Unit
1761



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-53 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-53 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nofre et al (5480668).

Nofre et al disclose N-substituted derivatives of aspartame and that N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1-methyl ester is an extremely potent sweetening agent, where the agent may be used by itself or in combination with other sweetening agents (see entire patent, especially column 6, lines 16-26). Nofre et al also disclose that the agent may be used in a variety of products (see column 1, lines 10-14).

The claims differ as to the amounts employed and the specific use in chewing gums.

In the absence of a showing to the contrary, the amounts employed are seen to be no more than optimization which is well-within the skill of the art, see In re Boesch 205 USPQ 215.

The use of intense sweeteners in chewing gum products is notoriously well-known and the selection of chewing gum product is well-within the skill of the art and merely a matter of choice.

Once the art has recognized the use of N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1-methyl ester as a sweetening agent, then the use and manipulation of amounts for use in chewing gums would be no more than obvious and well-within the skill of the ordinary worker.

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It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the sweeteners of Nofre et al in chewing gum products because it is well-known in the art that N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1-methyl ester is a powerful sweetening agent for use in foods and beverages.

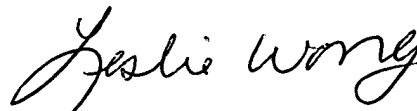
In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re Gershon 152 USPQ 602.

All of the claim limitations have been considered. None of them are seen as serving as basis for patentability. No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday from 6:30 AM to 3:00 PM.

The fax number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Leslie Wong
Primary Examiner
Art Unit 1761

LAW
March 21, 2001